IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13182 of 2004

Between:

Ambala Kishtaiah, S/o. Lachaiah, Hindu (S.C), R/o. Brahamanapalli Vilalge of R/M Mahadevpur, Karimnagar District.

..... PETITIONER

AND

1. Ravinderji, Assistant Agriculture Officer, Mahadevpur Election Officer for the Gram Panchayat, Brahamnpally, R/M Mahadevpur, Karimnagar District.

2. The Panchayat Extension Officer, Mahadevpur Village & Mahadevpur Mandal, Karimnagar District.

3. Kalva Gangaiah, S/o. Mallaiah, Hindu (S.C), R/o.Brahamnpally Village, Mahadevpur Mandal, Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order, or Direction more particularly one in the nature of Writ of Certiorari calling for the records pertaining to order dated 22-7-2004 made in O.P.No.14 of 2001 on the file of the Election Tribunal cum Junior Civil Judge, Manthani, Karimnagar District and quash the same as being illegal, arbitrary, and unconstitutional.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY

Counsel for the Respondents 1 & 2: Smt.Jyothi Eswar Gogineni

Counsel for Respondent No.3 : Mr. Jaganmohan Reddy

The Court made the following :

ORDER:

Feeling aggrieved by the order dated 22.07.2004 made in O.P.No.14 of 2001 by the Court of the Junior Civil Judge-cum-Election Tribunal, the petitioner invokes jurisdiction of this Court under Article 226 of the Constitution of India praying to quash the order of the Election Tribunal by issuing a writ of certiorari.

In the elections held to the Office of the Sarpanch of Brahmanapalli Gram Panchayat in August 2001, the petitioner was elected as Sarpanch. The third respondent herein raised election dispute by filing O.P.No.14 of 2001 on the file of the Election Tribunal, Manthani, under Section 233 of A.P.Panchayat Raj Act, 1994 (for short, the Act). The third respondent mainly alleges that the petitioner and his wife have three children and therefore the petitioner incurred disqualification under Section 19(3) of the Act. The petitioner entered appearance and opposed the O.P. denying the allegation that he has three children. He asserted that he has only two female children by name Ramya krishna and Rachana. The third respondent examined seven witnesses (P.W.1 to P.W.7) and marked Exs.A1 to A3. The petitioner examined himself as R.W.1, besides R.W.2 and marked Ex.B1. During trial, Exs.X-1, X-2 and X-2A were marked. On consideration of the oral and documentary evidence, the learned Election Tribunal found that the petitioner had three children as on the relevant date and therefore he is disqualified to contest or hold the Office of Sarpanch. Accordingly the election of the petitioner was declared as null and void, and a further declaration was given that the third respondent is duly elected Sarpanch of Brahmanapalli Gram Panchayat. Be it noted, there were only two candidates; petitioner and third respondent - who contested the election held on 17.08.2001.

The learned counsel for the petitioner strenuously contends that the impugned order of the Election Tribunal suffers from error apparent on the face of record and perversity, and therefore it is liable to be set aside. He made elaborate submissions placing strong reliance on evidence of Medical Officer, who was examined as R.W.2 and Ex.B1, which is the sterilization certificate issued by him. **Per contra**, these contentions are refuted by the learned counsel for the third respondent, Sri D.Jagan Mohan Reddy. He also placed reliance on Ex.X-1 to contend that the said document is extract of Births and Deaths Register kept during the course of performance of official duties and therefore as per Section 35 of the Evidence Act, 1872, it is relevant for deciding the disputed fact. It is also his submission that when the lower Tribunal has relied on Ex.X-1 and came to a conclusion the Rachana was a third child of the petitioner, it cannot be said that there is an error apparent on the face of record.

Before examining the rival contentions, it is necessary to briefly notice the scope of power to issue Writ of Certiorari in interfering with the orders passed by statutory Tribunals. It is well settled that when Statute creates Tribunals and entrust duty to adjudicate disputed questions of facts as well as law, unless such decisions suffer from grave perversity, ordinarily the finding of fact recorded by such statutory Tribunals must receive imprimature of this Court.

A reference may be made to **Syed Yakoob v K.S.Radhakrishnan** and **Jagdish Prasad v Smt.Angoori Devi.**

In **Syed Yakoob v K.S.Radhakrishnan** (supra) it was laid down:

> The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art.226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committee by inferior courts or tribunals; these are cases where orders are passed by inferior courts of tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. **There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.**
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> (emphasis supplied)

In **Jagdish Prasad v Smt.Angoori Devi** (supra) the Apex Court reiterated that the jurisdiction to issue a Writ of Certiorari is supervisory one and in exercising it, the Court is not entitled to act as a Court of Appeal and therefore the finding of facts arrived by an inferior Court or Tribunal are binding. The Court then referred to the case of **Syed Yakoob v K.S.Radhakrishnan** (supra) and observed as under:

> In the case of Syed Yakoob v K.S.Radha Krishnan [(1964) 5 SCR 64 : AIR 1964 SC 477] a Constitution Bench of this Court indicated the scope of interference in a certiorari proceeding by saying that a writ of certiorari is issued for correcting the errors of jurisdiction committed by the courts or tribunals in cases where they exceed their jurisdiction or fail to exercise it or exercise it illegally or improperly i.e., where an order is passed without hearing the party sought to be affected by it or where the procedure adopted is opposed to principles of natural justice. A caution was indicated by saying that the jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a Court of Appeal. That necessary means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari but not an error of fact, however, grave it may appear to be. The rule in Yakoob's case (AIR 1964 SC 477) when applied to the present facts would lead to the conclusion that the High Court exceeded its jurisdiction in interfering with the order of the Additional District Judge.

It is also not within the certiorari jurisdiction of this Court to re-determine the questions of fact. In this case, the learned Election Tribunal examined the evidence of P.W.6 and Ex.X-1 and came to a conclusion that baby Rachana is third child of the petitioner. Having regard to the circumstances under which Ex.X-1 came into existence, the learned Election Tribunal has drawn an inference that Ex.X-1 depicts the correct picture regarding the children of the petitioner. The petitioner herein

marked Ex.B1, which is a sterilization certificate issued by Medical Officer. The Medical Officer, who gave Ex.B1, was examined and it was found that Ex.B1 does not contain the date on which Tubectomy operation was performed on the petitioner's wife. On balancing the probabilities, the Election Tribunal came to a conclusion that the petitioner has three children and therefore he was disqualified under Section 19(3) of the Act. In so doing, the Election Tribunal did not commit any grave error apparent on the face of record. Be it noted, if it requires an elaborate argument to show an error, the same would not be an error apparent on the face of record. Merely because on the basis of some evidence it is possible to come to a different view, it cannot be a ground for this Court to interfere with the findings recorded by the learned Election Tribunal.

The writ petition, for the above reasons, is devoid of merits and is accordingly dismissed at the admission stage.

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(V.V.S.RAO,J)

28-07-2004.

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Ravinderji, Assistant Agriculture Officer, Mahadevpur; Election Officer for the Gram Panchayat, Brahamanpally, R/M Mahadevpur, Karimnagar District.

2. The Panchayat Extension Officer, Mahadevpur Village & Mandal,

Karimnagar District.

3. 2 CCs to G.P.for Panchayat Raj, High Court of A.P., High Court Buildings, Hyderabad (OUT)

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